IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 299 of 1985

in

SPECIAL CIVIL APPLICATIONNo 6081 of 1983

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SM UPADHYAYA

Versus

G S R T C

Appearance:

1. LETTERS PATENT APPEAL No. 299 of 1985
M/S NJ MEHTA ASSO. for Appellant No.
MR MD PANDYA, Advocate for Respondent No. 1
NOTICE SERVED on the Respondents Nos. 2 and 3

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI

and

HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 25/09/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE R.K.ABICHANDANI)

1. The appellant challenges the judgement and order dated 4th May 1984 of the learned Single Judge in Special Civil Application No.6081 of 1983, rejecting his petition, in which he had challenged the order made by the respondent - Gujarat State Road Transport Corporation prematurely retiring him from service with effect from 30th September 1983.

2. The appellant was prematurely retired under the proviso to Service Regulation No.51, which reads as under:

"Proviso to S.R. 51 :

Provided further that notwithstanding anything contained in this Regulation, the Corporation shall have the right to retire any Class-A or Class-II officer on or after the date on which he attains the age of 50 years by giving him notice of not less than 3 months in writing or 3 months' pay and allowance in lieu of such notice."

3. In connection with the said power of prematurely retiring the employees, guidelines were issued known as "Guiding Principles and Procedure to be followed for review of cases of Class I and II Employees of the G.S.R.T. Corporation", which were annexed to the General Standing Order, a copy whereof is at Annexure "B" to the petition. It was the petitioner's case that the order of his premature retirement was arbitrarily made. The petitioner's birth date was 3rd November 1927 and by the impugned order dated 30th September 1983, a copy of which is at Annexure "A" to the petition, he came to be relieved from service of the Corporation with immediate effect under service regulation No.51. At that time, he was working as Divisional Traffic Superintendent.

4. It was contended before us that there was no reasonable cause as contemplated by the guidelines for prematurely retiring the appellant. The learned counsel argued that the existence of reasonable cause should be made out on objective basis and that the material which was sought to be relied upon for the purpose of prematurely retiring the appellant and was referred to in

the affidavit-in-reply did not disclose any lack of integrity which could have justified premature retirement of the appellant whose record was good all throughout, was apparent from the fact that he was given first and second rank while evaluating his performance during service. It was submitted that there was absolutely no material produced to show the basis on which the integrity of the appellant was doubted. It was argued that the learned Single Judge had observed that, from the files produced before the Court, it appeared that some other material was also placed before the committee. However, without knowing as to what that material was, it was not possible for the appellant to demonstrate that such material was not sufficient or had no relevance for making the order against the appellant. It was argued that reference to such material by the learned Single Judge was contrary to all known canons of fair play. It was, therefore, submitted that the order of premature retirement of the appellant was arbitrarily made and violated Articles 14 and 16 of the Constitution of India.

4.1 The learned counsel, in support of his contentions, placed reliance on the following decisions of the Apex Court :

[a] The decision of the Supreme Court in State of Gujarat v. Suryakant Chunilal Shah, reported in (1999)1 SCC 529, was cited to point out that, in a case where there was no tangible material found against the employee except that he was involved in two criminal cases relating to issue of bogus permits and tampering of official records, it was held that pendency of cases in itself was not sufficient to retire the employee compulsorily, though it would depend upon the nature of offences and circumstances of each case to judge whether involvement in a criminal case can be a ground for compulsory retirement. The Supreme Court also held that public interest in relation to public administration means that only honest and efficient persons are to be retained in service, while services of dishonest or corrupt or those who are almost dead wood are to be dispensed with. The Court held that, in order to find out whether any government servant has outlived his utility and is to be compulsorily retired in public interest for maintaining an efficient administration, an objective view of overall performance of that government servant has to be taken. One of the methods of

discerning efficiency, honesty or integrity of a government servant is to look to his character roll entries for the whole tenure from inception to the date on which decision for his compulsory retirement is taken. On the facts of the case, the Court found that there was hardly any material on the basis of which a bonafide opinion could have been formed that it would be in public interest to compulsorily retire the employee from service.

[b] The decision of the Supreme Court in Union of India v. M.E.Reddy, reported in (1980)2 SCC 15, was cited to point out that the Supreme Court held therein that the object of compulsory retirement was to weed out the dead wood in order to maintain a high standard of efficiency and initiative in service. It was submitted that the service record of the appellant was good and there was, therefore, no need to prematurely retire him on the ground that it was necessary so to do in order to maintain a high standard of efficiency in service. It will be noticed from the said decision that the Supreme Court held that, while examining the said aspect, the Court would have to act only on affidavits, documents and other papers produced before it by the parties and it cannot delve deep into the confidential or secret records of the government to fish out materials to prove that the order is arbitrary or malafide.

[c] The decision of the Supreme Court in N.C.Dalvadi v. State of Gujarat, reported in (1987) 3 SCC 611, was cited to point out that, in paragraph 9 of the judgement, the Supreme Court held that, it was open to an aggrieved party to contend that the requisite opinion has not been formed or that the decision is based on collateral grounds or that it is an arbitrary decision.

5. From the record of this case, it appears that the committee consisting of the three members, mentioned by designation in the "guiding principles", had considered the appellant's case for deciding whether he should be prematurely retired after 55 years of age. One of the members of the said committee, who was the Deputy General Manager (General) in the Corporation has filed an affidavit stating that the case of the appellant and other incumbents who were completing the age of 50 / 55 years were considered by the committee, as contemplated

by the General Standing Order, in its meeting held on 12th September 1983 and, after examining the relevant information placed before it regarding the annual confidential reports, reports regarding integrity, physical condition, offences and default information etc. in respect of the appellant who had completed age of 55 years on 2-11-1982, the committee was of the view that his integrity was doubtful. Moreover, his default information revealed that his efficiency and conduct were not at all satisfactory. The committee, therefore, recommended to the Corporation to retire the appellant prematurely by giving him the requisite notice. The recommendation of the committee was placed for the consideration before the Board of the Corporation at its meeting held on 30th September 1983 which accepted it pursuant to which the impugned order of his premature retirement came to be passed. It was pointed out in the affidavit-in-reply that the record of the appellant revealed that he had made false claims of travelling allowance and the dearness allowance and was made to refund the amounts drawn in excess.

6. The learned Single Judge, after carefully considering the material on record and looking into the original record which was produced in the Court, was satisfied that, besides the confidential reports, other material was also placed before the Committee and on consideration of the material so placed, the Committee had entertained a doubt regarding the integrity of the appellant and held that, when from the nature of lapses found to have been committed by the appellant, the Committee came to the conclusion that his integrity was doubtful, it cannot be said that it had no reasonable cause to believe so. It was observed that, belief regarding doubtful integrity of an employee has to be in the nature of an inference on the basis of the relevant material and there need not be any specific report or instance clearly indicating that the integrity was doubtful. The inference can be drawn on the basis of the information available to the concerned authority. It was held that, in the present case, having regard to the material considered before passing the order of premature retirement, it cannot be said that the order was either arbitrary or perverse.

7. The Court can, for its own satisfaction, look into the original record to ascertain whether the averments made in the affidavit about the materials having been placed before the Committee are correct or not. As observed by the Supreme Court in M.E.Reddy's case (supra), the Court has, an undoubted power, subject

to any privileges or claims that may be made by the State, to send for the relevant confidential personal file of the government servant and peruse it for its own satisfaction without using it as evidence. The learned Single Judge was therefore perfectly justified in looking into the original record and observing that it appeared therefrom that the relevant material was in fact placed before the Committee, and, it cannot be said that such a course was contrary to any principle of fair play or was prejudicial to the appellant as was sought to be contended by the learned counsel for the appellant.

8. It is a settled legal position that the service record of an employee would form material to find out whether the employee had outlived his utility in service, and that, it is on consideration of totality of the material with emphasis on the later entries in the character roll that the competent authority is expected to form its opinion whether an employee is to be prematurely retired or not. The order of premature retirement passed in accordance with the rules would not be an order of any punishment and rules providing for premature retirement are usually framed to maintain high standard of efficiency in public service.

9. The findings of the Committee for premature retirement of the employee cannot be tested on the standard of proof applicable to departmental inquiries for reaching a finding of guilt. The standard of preponderance of probabilities, applicable while considering the charges made against a delinquent during the departmental inquiry, which is germane to imposition of punishment, cannot be invoked for ascertaining whether a decision of the Committee to prematurely retire an employee was justified or not. While deciding a case for premature retirement, criteria for reaching the decision would be of existence of the totality of facts from the service record of the employee which would enable discontinuance of the employee for retention in service beyond 50 / 55 years. The standards for considering retention beyond 50 / 55 years can not be as stringent as the standards of imposing punishment, because, in view of the stipulation of review for retention contained in the service rules, the employee has no right to continue beyond the age when his case can be considered for premature retirement under the rules. In a challenge against premature retirement, the Court has merely to ascertain whether the committee has acted on the basis of the material that has nexus with the decision of premature retirement. In cases where there is absolutely no material against the employee and the record warrants

his continuance, decision to compulsorily retire him in absence of anything adverse to such employee, can be termed as arbitrary or unreasonable. But if there is some material on the basis of which it is possible to come to a conclusion that the employee should be prematurely retired and the decision cannot be successfully assailed on the ground of malafide exercise of powers or any breach of statutory or mandatory procedural requirement, the Court would refrain from substituting the opinion of the Committee.

10. In the present case, it is clear that there was relevant material, placed before the Committee, which had a nexus with the process of deciding whether the employee should be compulsorily retired at 55 years or not. It cannot be said that it was not possible to take the decision of premature retirement of the appellant on the basis of the information placed before the Committee. The Committee appears to have acted as per the guidelines prescribed for the purpose and there is nothing to indicate that the impugned order of the appellant's premature retirement is in any manner arbitrary or otherwise illegal. We, therefore, find ourselves in complete agreement with the reasoning adopted by the learned Single Judge in rejecting the petition. The appeal is, therefore, dismissed with no order as to costs.

[R.K.ABICHANDANI, J.]

[K.M.MEHTA, J.]

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